

BY \_\_\_\_\_  
DEPUTY

**CIVIL ACTION NO. A-04-CA-042-SS**

**ORIGINAL**

sentenced inmate whose competency is at issue be given the opportunity to contradict the evaluations of the State or court-appointed experts. *Panetti v. Quarterman*, 127 S.Ct. 2842, 2856-57 (2007); see *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and concurring in the judgment)(holding that prisoner must be permitted to “offer contrary medical evidence” or “explain[] the inadequacies of the State’s examinations”). Counsel is therefore entitled to be present so that he can assess the nature and reliability of the evaluations and, if appropriate, offer expert rebuttal evidence to them.

Mr. Panetti has long suffered from paranoid schizophrenia. Specifically, he suffers a delusion wherein he is constantly under attack by evil spiritual forces. He is deeply suspicious of people he does not know. Mr. Panetti does not know Dr. Waldman and will very likely react in a way that will defeat the reliability of the evaluation.

This Court will decide Petitioner’s competency based in part on expert evaluations. The Court’s decision will ultimately depend on the reliability and objectivity of the evaluations which are conducted. If Mr. Panetti’s mental illness prevents him from participating in objective testing, this Court will be left with the same state of affairs that Dr. Parker and Dr. Anderson experienced when they appeared unannounced to interview him in 2003. As the Court will recall, Mr. Panetti confronted them suspiciously, quoted the Bible, and was, from their point of view, uncooperative. While it is unclear whether Dr. Parker or Anderson intended to conduct any formal testing of Mr. Panetti, it is clear that after about an hour, they left without any objective evaluation or test results.

Counsel has a strong interest in the reliability of Dr. Waldman's evaluation. If conducted improperly or a determination is made faulty due to Mr. Panetti's condition, Dr. Waldman may be persuaded to supply the subjective opinion that he is competent. Reliable, objective testing, on the other hand, will demonstrate Mr. Panetti is incompetent. Counsel or one of Petitioner's experts can supply a level of reassurance in order that objective, reliable data is collected during the evaluation. See Patricia A. Zapf, *et al.*, *Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist*, 21 Behav. Sci. & L. 103, 117-19 (2002) (cited in Brief for American Psychological Association *et al.* as *Amici Curiae* 17-19, which the Supreme Court cited favorably in *Panetti*, 127 S.Ct. at 2863).

Dr. Conroy is located in Huntsville and could otherwise be available on the scheduled date. However, she is presenting at the Texas Psychological Association convention at that time in San Antonio. Counsel would therefore ask that Dr. Conroy and Dr. Waldman be ordered to find a mutually acceptable date and time so that both may be present during the evaluation.

Alternatively, counsel asks that counsel for Mr. Panetti be permitted to be present during the evaluation. Counsel in no way intends to disrupt or impede any testing. On the contrary, presence will aid counsel in ensuring the reliability of the testing or identifying its deficiencies for this Court.

Respectfully submitted,



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COUNSEL FOR PETITIONER

**SCOTT LOUIS PANETTI,**  
*Petitioner,*

**NATHANIEL QUARTERMAN,**  
**Director, Texas Department**  
**of Criminal Justice,**  
**Correctional Institutions Division,**  
*Respondent*



## CERTIFICATE OF CONFERENCE

Undersigned counsel personally delivered this Motion to Respondent's counsel on November 13, 2007.

  
KEITH S. HAMPTON

**SCOTT LOUIS PANETTI,**  
*Petitioner,*

**NATHANIEL QUARTERMAN,**  
**Director, Texas Department**  
**of Criminal Justice,**  
**Correctional Institutions Division,**  
*Respondent*

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## CERTIFICATE OF CONFERENCE

Undersigned counsel conferred with counsel for Respondent this day November 13, 2007, and Respondent is opposed to this *Motion for Presence of Counsel or Petitioner's Expert During Expert Examinations Conducted by Respondent's Expert*.

KEITH S. HAMPTON

**SCOTT LOUIS PANETTI,**  
*Petitioner,*

**NATHANIEL QUARTERMAN,**  
**Director, Texas Department**  
**of Criminal Justice,**  
**Correctional Institutions Division,**  
*Respondent*

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Petitioner's counsel has a right to notice and opportunity to advise their client

regarding the examinations. IT IS THEREFORE ORDERED that Respondent give specific notice of the purpose and scope of the tests to be administered, including identifying each examination and what it is intended to reveal.

Petitioner also has a right to have his expert ensure the reliability and propriety of the examinations. IT IS THEREFORE FURTHER ORDERED that Petitioner's expert and Respondent's expert communicate and make a mutually acceptable date for testing.

SIGNED this the \_\_\_\_ day of November, 2007.

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UNITED STATES DISTRICT JUDGE